



**REQUEST FOR OFFER**  
Issued against the  
Department of General Services, Procurement Division  
California Multiple Award Schedules Master Agreement

For  
Expert Consulting Services  
to Provide  
System Testing Services

For the  
Department of Alcohol and Drug Programs  
HIPAA Compliance Branch  
Short Doyle Medi-Cal ADP Remediation Technology (SMART)

Submitted by the  
Department of Alcohol and Drug Program

**September 4, 2008**

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## INTRODUCTION

The Department of Alcohol and Drug Programs (ADP) is the single state agency responsible for coordinating, planning, and administering substance abuse prevention and treatment services in California. ADP provides leadership and coordination for planning, developing, implementing, and evaluating a comprehensive statewide system for alcohol and other drug (AOD) intervention, prevention, detoxification, treatment, and recovery services. Services are provided to Californians through partnerships with counties and local AOD providers. ADP is a covered entity under Health Insurance Portability and Accountability Act (HIPAA).

The implementation of HIPAA requires cooperation, collaboration, and teamwork across State and local entities and ADP Divisions. The Contractor will work collaboratively with ADP's Short-Doyle Medi-Cal ADP Remediation Technology (SMART) Enterprise Project Manager and team, the Independent Project Oversight Consultant (IPOC) Contractor, the Project Management Office (PMO) and other ADP staff and management to assure work products meet the operational and regulatory needs of ADP.

In order to administer and monitor the Drug Medi-Cal (DMC) program, ADP relies on the current Short Doyle/Medi-Cal (SD/MC) system to adjudicate claims and to generate specific related information. The Department of Health Care Services (DHCS) is the agency responsible for the adjudication of DMC claims. The system used for this purpose is located and operated at DHCS. DHCS SD/MC system is being replaced with a new system under development that is HIPAA-compliant and known as SD/MC Phase II. Consequently, ADP's DMC program and processes will be significantly impacted. This impact includes ADP participation in all phases of development: system description, system design, testing, production, and implementation.

Participation in the SD/MC Phase II system development is critical to ADP because:

- SD/MC allows for adjudication of DMC claims, and directly affects ADP's ability to pay for services covered under the DMC program;
- ADP uses information from the claims to audit DMC programs;
- ADP is required to pay Trading Partners within a specific time as detailed in regulation (Trading Partners include county contracted facilities, county operated facilities, and direct contract providers); and
- Implementation of SD/MC Phase II is required for ADP to be HIPAA-compliant with the Transaction Code Set (TCS) rule without the use of a Translator.

## THE PROJECT

### **PURPOSE & SCOPE**

ADP is a “covered entity” under HIPAA due to its responsibility as the DMC “Health Plan” for AOD programs in California. ADP must also be compliant with other State and federal regulations, which intersect or surpass HIPAA requirements. To meet these compliance demands ADP created its HIPAA Compliance Branch.

Currently, the HIPAA Branch is working on the Short-Doyle Medi-Cal ADP Remediation Technology (SMART) Project to ensure that ADP:

- Has made the necessary changes so that its systems and processes are compatible with the new claims adjudication (SD/MC Phase II) system at DHCS;
  - All internal ADP processes that rely on the DMC number must be modified;
  - All internal processes and systems that rely on proprietary claims processing codes versus HIPAA-compliant claims processing codes must be modified;
  - A new process to send accounting information to the new SD/MC Phase II system must be designed, developed, and implemented;
  - Interim translator processes must be eliminated and/or modified to work with the new SD/MC system; and
- Receives the appropriate information from the new system to continue timely payment of DMC claims, and to sufficiently monitor and audit the DMC program.

SD/MC Phase II is a remediation project that impacts ADP's: program processes, legacy systems, organizational structures, personnel, contractor and business associates, and operations. The true business opportunity is in the process of ADP reviewing and modifying its internal systems and functions. This provides an opportunity to automate manual systems, align and interface currently separate databases, and consider other ways to streamline how we do business.

ADP is using the California Multiple Award Schedule (CMAS) process to obtain the needed services. This project will be based on the required tasks and the completion of deliverables that are agreed to by the Contractor and ADP. ADP's required tasks and deliverables are described in the Statement of Work (SOW) in Attachment A.

The purpose of this Request for Offer (RFO) is to engage contracted resources to perform testing on internal and external processes related to Drug Medi-Cal (MC) claims processing. The scope of testing includes system and user acceptance testing as uniquely defined by the current project. In particular, the term “user acceptance” testing refers to a different stage of system testing rather than the standard definition of UAT. The contractor must have expert knowledge of HIPAA Transaction Code Sets (TCS) and substantial experience implementing TCS. The contractor must provide specialized HIPAA TCS testing software or tools to create and read 837s (electronic claim submission) and 835s (payment remittance advice). This project is in the Execution Phase with multiple work products already completed or in the process of being

completed. The work requested includes the full scope system testing typically associated with Information Technology (IT) projects normally associated with any system testing effort.

This project involves the Department of Mental Health (DMH) and the Department of Health Care Services (DHCS). The Contractor is not expected to have any particular responsibility for coordination, but may be asked to participate in meetings, share work products, or work collaboratively with others as needed to successfully perform testing.

This project is on an aggressive schedule. The project has established deadlines with milestones that must be met with DHCS.

The tasks and deliverables described in this RFO represent the ADP description of the work and products it believes should be accomplished for the HIPAA project. ADP expects the Contractor to submit a proposal that describes the work and products it intends to produce to meet ADP's needs.

Working with ADP's HIPAA Project Director, the HIPAA Steering Committee, ADP SMART Enterprise Project Manager and team, the IPOC Contractor, the PMO, and other ADP staff and management, ADP expects the Contractor to fulfill the components of the Statement of Work (SOW) for this Project that consists of separate tasks and/or services, each resulting in a specific product/deliverable. ADP will reimburse the Contractor for such services in accordance with the rates and costs defined in the Contractor's response to the RFO.

The scope of the SMART Project as it relates to this RFO includes the activities listed below:

- Achieve compliance with all applicable HIPAA rules by making necessary modifications to ADP internal systems; and
- Become fully functional with the new SD/MC system by participating in system development and implementation and making necessary modifications to ADP policies, procedures, and internal systems.

## ***BUDGET***

ADP has allocated up to **\$140,000** for this contract. ADP will only accept bids up to this amount or less.

## ***PERIOD OF PERFORMANCE***

This engagement is for 10 months of service to begin on or around October 1, 2008.

The contract may be amended to renew the contract for up to an additional year under the same hourly rate, if sufficient funds are made available, if both parties agree, and if the amendments meet all applicable legal requirements. In addition, the contract will be subject to any additional restrictions, limitations, or conditions enacted by the Legislature

(or by Congress) that may affect the provision, terms, or funding of the contract in any manner. If funds are not appropriated for this Project, ADP will terminate the contract and the contract will have no further force and effect.

## CONTRACTOR RESPONSE

### HOW TO RESPOND

Mail or hand-deliver your original signed offer, with bound proposals, and five copies, along with a copy on a CD in Microsoft Word, to the Department as listed below. The contract response must be received **no later than 4:00 pm, September 22, 2008**. Late responses will not be accepted.

Department of Alcohol and Drug Programs  
Contracts Unit  
Attention: **Greg Martinez**  
1700 K Street, 1st Floor  
Sacramento, CA 95811

### ESTIMATED KEY DATES

ADP advises all contractors of the following estimated schedule and expects contractors to adhere to the required dates and times. Award of any contract pursuant to this RFO is dependent upon internal approvals and the availability of funds. All dates are estimates. ADP may extend these dates as necessary.

EVENT	BY WHOM	COMPLETION DATE
Release of RFO	ADP	September 5, 2008
RFO-related questions due	Vendors	September 5-15, 2008
Answers to questions posted electronically on CalOHI website	ADP	September 16, 2008
<b>Final date for proposal submissions</b>	<b>Vendors</b>	<b>September 22, 2008</b>
Review and Score Proposals	ADP	September 23, 2008
Vendor staff available for potential interview with ADP	ADP	September 24, 2008
Proposed Contract approval	ADP	September 25, 2008
Earliest date work to begin	Successful Vendor	October 1, 2008

To ensure that all candidates have equal access to proposal requirements, questions will be accepted via email (only) to the following address: [hipaa1@adp.ca.gov](mailto:hipaa1@adp.ca.gov).

Phone inquiries will not be accepted. Questions, along with their responses, will be compiled and posted on the CalOHI website at [www.calohi.ca.gov](http://www.calohi.ca.gov) under *State HIPAA Procurements*.

ADP reserves the right to change this schedule at any time. ADP will inform the participating contractors of any changes as needed.

## **REQUIREMENTS FOR RESPONSE**

The Contractor shall prepare a proposal in electronic form that includes the following sections:

- Executive Summary
- Contractor Personnel
- Statement of Qualifications
- Proposed Approach
- Preliminary Work Plan
- Itemized Budget
- Additional Contractor Requirements
- References
- Résumés
- Administrative Requirements

More detailed response requirements for each of these sections are described below.

### **Executive Summary (Maximum one page)**

This section provides a summary of how the Contractor will meet ADP needs and why their offer should be selected.

### **Contractor Personnel (Maximum one page)**

The Contractor shall identify the consultant personnel who will be responsible for the completion of all tasks and deliverables during the Project including a statement defining each individual's qualifications. The Contractor shall identify the CMAS personnel classification for each assigned personnel. Corresponding résumés for all proposed personnel are required. Details are described in a later section titled *Résumés*.

The Contractor shall not change personnel commitments made in the Contractor's proposal without prior written approval from ADP, unless the change is due to the resignation or death of any named individual. ADP shall approve in advance and in writing any permanent or temporary changes to the Contractor's personnel. The Contractor shall supply suitably knowledgeable personnel necessary to complete the required deliverables within the Contractor's proposed timeframes. ADP reserves the right to require the removal of any member of the Contractor's personnel from the project.

### **Statement of Qualifications (Maximum seven pages)**

This section provides a response to the itemized qualification items listed below for the Contractor and the proposed resource(s):

1. Evidence of Contractor consultant personnel knowledge and experience working with other State of California health care organizations and their programs, organization, stakeholders and clients.
2. Evidence of Contractor consultant personnel knowledge in HIPAA Transaction Code Sets (TCS) and substantial experience implementing HIPAA TCS.
3. Evidence of Contractor consultant personnel expert knowledge and substantial experience in system testing.
4. Evidence of specialized HIPAA TCS testing software or tools to create and read 837s and 836s.
5. Evidence of Contractor consultant personnel portrayal of excellent oral and written communication skills.

**Proposed Approach (Maximum six pages)**

This section provides a brief description of how the Contractor will meet the task and deliverable requirements described in the Attachment A – Statement of Work.

**Preliminary Work Plan (Maximum five pages)**

This section should consist of a preliminary work plan to include objectives with their activities and tasks. Tasks should include the following: milestones, deliverables, responsibility, and completion dates. The work plan should briefly describe the approach and methodologies used to accomplish each task, including a description of how the Contractor proposes to perform the work and produce the deliverables.

This section must include assumptions used to develop the response, and any additional ADP and Contractor responsibilities not identified in the RFO, if any, that would further the ADP goals for system and user acceptance testing.

**Itemized Budget (by deliverable)**

The Contractor must provide an itemized budget, by deliverable, in the format presented in Attachment B.

Contractor may travel within Sacramento, California in order to attend meetings located at other State departments and county provider locations. However, ADP will not reimburse travel expenses, including mileage and parking. The Contractor must factor all expenses into the cost estimates.

Rates must be consistent with, and cannot exceed, those posted in the Contractor's CMAS contract for the required classification and area of service.

**Additional Contractor Requirements**

ADP requires the Contractor staff to work on-site, full-time or approximately 40 hours per week. Performance of work off-site must be approved by ADP's HIPAA Project Director. ADP will provide networked desktop computers for the consultant staff to use for this engagement. These computers will have the Microsoft Office Professional Edition 2003, Microsoft Project Professional 2002, access to Microsoft Project Server and Microsoft

Office Outlook 2003 e-mail software. The Contractor must provide a listing of any additional requirements for ADP-supplied space and equipment. The rates stated in the proposal should reflect a reduction in CMAS approved rates because ADP is supplying office space and equipment.

The contract with the successful bidder will include a Business Associate Agreement, included as Attachment D – Business Associate Agreement.

## References

The Contractor response must include reference information for each contractor resource proposed. The contact information for the reference must be current.

Provide three references from customers in other organizations for similar work completed by the Contractor within the last three years in the format illustrated in Attachment C - References. ADP may contact all references provided and may contact others for references also.

## Résumés

Provide a résumé for each Personnel Candidate detailing relevant experience, skills, education and training. The résumés will be reviewed to ensure that all qualifications in the CMAS Labor Category are met. In addition, the résumés must support experience and skills defined in the SOW. Samples of work must relate to the tasks of this Project

## Administrative Requirements

The Contractor must provide a response to the following administrative requirements:

1. If the Contractor is using Sub-contractors; the firm name, contact person, address including city/state/zip, telephone, and fax number must be provided. Sub-contractors are subject to ALL of the requirements, terms and conditions, and procedures detailed in this RFO;
2. A completed Std 204, Payee Data Record, which the Contractor may access electronically at: <http://www.documents.dgs.ca.gov/osp/pdf/std204.pdf>;
3. Federal Certification of non-debarment;
4. One copy of the Contractor's signed CMAS agreement, including all terms and conditions;
5. Prime and / or Sub-contractors Small Business Certification by the State Department of General Services, if applicable; and
6. **DVBE participation is required in this project.** Please view the DVBE program and obtain the required submittal forms at the following Website [www.documents.dgs.ca.gov/pd/dvbe/resource.pdf](http://www.documents.dgs.ca.gov/pd/dvbe/resource.pdf). The "Good Faith Effort" option 14 day advertising requirement (Trade and Focus Paper) is waived.

NOTE: ADP is collecting data for ALL Small Business (SB) and / or Disabled Veteran Business Enterprise (DVBE) contract participation. Bidders must identify ALL SB and / or DVBE participation in their Project Budget.

## EVALUATION OF RESPONSES

### **CONTRACTOR AVAILABILITY**

The Contractor must be available to start work no later than October 1, 2008. If the submitted candidate cannot start work on this date, ADP may consider the bid non-responsive and it will not receive further consideration. This start date is contingent on State budget authority. Contractor must also agree to be available for a contract amendment of up to an additional one year, under the same hourly rate, at the end of the contract period, if required.

### **REFERENCES**

Requested references must be clear and concise and must include beginning and ending dates of previously qualifying experience. Reference information must be current and accurate.

### **EVALUATION PROCESS**

The RFO Review Team will put each offer through a process of evaluation to determine its responsiveness to the RFO utilizing the State's "Best Value" criteria. The total number of available points for scoring is 100.

Step 1: Fifty points (50) of the total number of points are available to each proposal based on a complete response from the bidder relative to the SOW outlined in this document.

ADP may require interviews of vendor staff for clarification purposes. Individuals must be available for an interview within three (3) working days after notification of an interview required.

Vendors must be available for interviews on the date(s) shown in Key Dates section of this document.

Step 2: Thirty points (30) maximum to each proposal based on cost.

Step 3: For the two top scoring Contractors, references will be contacted and twenty points (20) maximum will be allowed. Scoring will be based on information from the references about the quality of work performed and the satisfaction with the contractor's performance.

Evaluating minimum requirements for scoring – A "No" response to any of the questions in step 1 shall cause the proposal to be deemed non-responsive and will not receive further consideration.

- Was the proposal delivered on time, in the required format and media?
- Does the proposal contain all required elements with an original signature on the cover letter or proposal cover page?

Statement of Work Requirements – A total of fifty (50) points can be awarded in this section. Questions 1-5 will be evaluated using the criteria listed above each set of questions (any single score less than or equal to 3 on a single question will eliminate the proposal from the selection process):

Questions 1-5: Maximum 10 Points Each Question

Proposal Review Points	Rating Criteria
9-10	All required elements and/or experiences are fully addressed; demonstrate expert skill level; and include verifiable references.
6-8	All required elements and/or experiences are fully addressed with verifiable references.
4-5	All required elements and/or experiences are fully addressed but not all are referenced or verifiable.
1-3	All required elements and/or experiences are <u>not</u> represented.

1. Does the candidate(s) have knowledge and experience working with other State of California health care organizations and their programs, organization, stakeholders and clients?
2. Does the candidate(s) have knowledge in HIPAA Transaction Code Sets (TCS) and substantial experience implementing HIPAA TCS?
3. Does the candidate(s) have expert knowledge and substantial experience in system testing?
4. Does the candidate(s) have specialized HIPAA TCS testing software or tools to create and read 837s and 836s?
5. Does the candidate(s) have excellent oral and written communication skills?

If interviews are considered ADP will score selected candidates pass/fail.

Cost Evaluation – Proposals *that are eliminated prior to this step will neither be awarded points in this section nor included in the score calculations.*

Thirty points (30) are available for award to each proposal in this section. ADP will conduct the evaluation using the “Best Value” process. ADP will base the cost score on the following criteria:

- The lowest dollar cost proposal is awarded the maximum cost points of 30 points (30%) of the overall proposal score. Other proposals are awarded cost points on the following calculation:  
$$\frac{\text{Lowest dollar proposal (divided by)}}{\text{Other proposal dollar amount}} \times 30 \text{ points} = \text{Cost Score}$$

Calculations up to the nearest tenth of a decimal point will be used.

## MANAGEMENT OF THE PROJECT

### **CONTRACTOR INVOICING**

Each month, Contractor will submit invoices for services and deliverables completed and accepted (see description below) during the preceding month. ADP will approve payment, less a 10% withhold. ADP will authorize release of the amount withheld to the Contractor upon approved completion of all specified deliverables at the end of the contract.

### **ISSUE RESOLUTION**

When a problem or issue arises, the consultant will immediately report it to ADP's Executive Sponsor, Project Director, or IT Project Manager depending on the nature of the issue. Escalation of unresolved issues is the responsibility of the Contractor.

### **STANDARDS AND POLICIES**

The contractor shall adhere to ADP's required information technology standards, guidelines and policies. Contracted staff is expected to abide by the same standards and policies as State staff. The following regulations, standards, guidelines and policies serve as the minimum criteria for quality assurance management. These documents are:

- California State Administrative Manual
- Department of Alcohol and Drug Programs Administrative Manual
- ADP Information Security Policy
- ADP Internet Policy
- ADP Drug-Free Workplace Policy
- ADP Sexual Harassment Policy
- Code of Federal Regulations, Title 42, Part 2 – Confidentiality of Alcohol and Drug Abuse Patient Records.
- HIPAA Rule

**ATTACHMENT A – STATEMENT OF WORK*****INTRODUCTION***

The Contractor will engage the California Department of Alcohol and Drug Programs (ADP), Short-Doyle Medi-Cal ADP Remediation Technology (SMART) Technical Project Manager, as a key customer and owner of all work products. The Contractor will report to the ADP SMART Technical Project Manager and act under their direction for all tasks in the SOW. The Contractor will work closely with the ADP SMART Enterprise Project Manager and team, the Independent Project Oversight Consultant (IPOC) Contractor, the Project Management Office (PMO) and other ADP staff and management to assure work products meet the operational and regulatory needs of the ADP. The task descriptions and respective deliverables are provided below.

The Contractor will possess:

- HIPAA Transaction Code Sets (TCS) expert knowledge and substantial experience implementing TCS; and
- System testing expert knowledge and substantial experience.

The Contractor may possess:

- Specialized HIPAA TCS testing software or tools to create and read 837s (electronic claim submission) and 835s (payment remittance advice)

This SOW defines the system testing services to be provided by the Contractor to the HIPAA Compliance Project (HCP) SMART Project.

***Overview of Work***

The ADP will engage contracted resources to perform testing on internal and external processes related to Drug Medi-Cal (MC) claims processing. The scope of testing includes system and user acceptance testing as specifically defined by the current project. This project is in the Execution Phase with multiple work products already completed or in the process of being completed. The work requested includes the full scope system testing typically associated with Information Technology (IT) projects normally associated with any system testing effort.

This project involves the Department of Mental Health (DMH) and the Department of Health Care Services (DHCS). The Contractor is not expected to have any particular responsibility for coordination, but may be asked to participate in meetings, share work products, or work collaboratively with others as needed to successfully perform testing.

This project is on an aggressive schedule. The project has established deadlines with milestones that must be met with DHCS.

## **TASKS**

This SOW is comprised of the following tasks:

Task 1: User Acceptance Testing (UAT) Plan for Short-Doyle Medi-Cal Phase II

Task 2: System Test Plan for SMART

Task 3: UAT Plan for SMART

### **TASK 1: UAT PLAN FOR SD/MC PHASE II**

#### **Task Description:**

- Use or modify the existing SD/MC Phase II UAT to create a UAT Plan for ADP that focuses on ADP's role in the SD/MC Phase II user acceptance testing.
- Develop and identify the detailed test procedures, scenarios, scripts, data and documentation that will be performed to test SD/MC Phase II.
- Develop, finalize, and document the detailed acceptance criteria for each test script.
- Develop and finalize the resources and work schedule to conduct and perform system testing.
- Create and finalize UAT results report.

#### **Deliverables**

- 1.1. Detailed SMART test plan: procedures/documentation.
- 1.2. Test scenario documentation.
- 1.3. Test script documentation.
- 1.4. Test data documentation.
- 1.5. Finalized acceptance criteria for each type of test.
- 1.6. Final list of testing resources. Contractor will perform all testing.
- 1.7. Document detailed schedules for conducting various tests.
- 1.8. Conduct testing pursuant to the test plan and conduct regression testing as needed.
- 1.9. UAT results report.

### **TASK 2: SYSTEM TEST PLAN FOR SMART**

#### **Task Description**

- Create a System Test Plan for SMART.
- Develop and identify the detailed test procedures, scenarios, scripts, data and documentation that will be performed to system test SMART.
- Develop, finalize, and document the detailed acceptance criteria for each test script.
- Develop and finalize the resources and schedule to conduct the testing.
- Create a System Test results report.
- Create and update a Requirements Traceability Matrix.

**Deliverables**

- 1.10. Detailed SMART test plan: procedures/documentation.
- 1.11. Test scenario documentation.
- 1.12. Test script documentation.
- 1.13. Test data documentation.
- 1.14. Finalized acceptance criteria for each type of test.
- 1.15. Final list of testing resources that will be needed. Contractor will perform all testing.
- 1.16. Document and detail schedules for conducting various tests.
- 1.17. Conduct testing pursuant to the test plan and conduct regression testing as needed.
- 1.18. System Test results report.
- 1.19. Requirements Traceability Matrix.

**TASK 3: UAT PLAN FOR SMART****Task Description**

- Create a UAT Plan for SMART.
- Develop and identify the detailed test procedures, scenarios, scripts, data and documentation that will be performed to user acceptance test SMART.
- Develop, finalize, and document the detailed acceptance criteria for each test script.
- Develop and finalize the resources and schedule to conduct the testing.
- Create a User Acceptance Test results report.

**Deliverables**

- 1.20. Detailed SMART test plan: procedures/documentation.
- 1.21. Test scenario documentation.
- 1.22. Test script documentation.
- 1.23. Test data documentation.
- 1.24. Finalized acceptance criteria for each type of test.
- 1.25. Final list of testing resources. Contractor will perform all testing.
- 1.26. Document detailed schedules for conducting various tests.
- 1.27. Conduct testing pursuant to the test plan and conduct regression testing as needed.
- 1.28. UAT results report.

**ATTACHMENT B – PROPOSED BUDGET**

DELIVERABLE	PERSONNEL	HOURS	HOURLY RATE	PERSONNEL COST
Deliverable 1	A	X	\$XXX	\$XXX
	B	Y	\$XXX	\$XXX
	SUBTOTAL			\$XXXX
Deliverable 2	A	X	\$XXX	\$XXX
	B	Y	\$XXX	\$XXX
	SUBTOTAL			\$XXXX
Deliverable 3	A	X	\$XXX	\$XXX
	B	Y	\$XXX	\$XXX
	SUBTOTAL			\$XXXX
TOTAL CONTRACT COST				\$XXXXX

**ATTACHMENT C – REFERENCES**

<b>Reference Contact Information</b>	<b>Brief Service Description &amp; Relevant Work Products</b>
Name: Title: Organization: Phone: Email:	Period of Performance: Description:
Name: Title: Organization: Phone: Email:	Period of Performance: Description:
Name: Title: Organization: Phone: Email:	Period of Performance: Description:

**ATTACHMENT D – BUSINESS ASSOCIATE AGREEMENT****HIPAA BUSINESS ASSOCIATE AGREEMENT**RECITALS**1. COVERED ENTITY**

A covered entity means a health plan, a health care clearinghouse, or a health care provider that conducts any standard electronic transaction. The standard electronic transactions are those provided in the Transactions and Code Sets Rule.

**2. BUSINESS ASSOCIATE (BA)**

A Business Associate means a person or organization, other than a member of the covered entity's workforce, that performs or assists in the performance of:

A function or activity involving the use or disclosure of individually identifiable health information, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, benefit management, practice management, and re-pricing, or any other function or activity regulated by the HIPAA Privacy Rule, or legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services.

Business associates perform these functions on **behalf** of covered entities or to an Organized Health Care Arrangement (OHCA). A covered entity can be a Business Associate of another covered entity.

- A. This Contract (Agreement) has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act ("HIPAA") and its implementing privacy and security regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations:").
- B. The California Department of Alcohol and Drug Programs ("ADP") wishes to disclose to Business Associate certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information ("PHI").
- C. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium that relates to the past, present, or future physical or mental condition of an individual, the provision of health and dental care to an individual, or the past, present, or future payment for the provision of health and dental care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI shall have the meaning given to such term under HIPAA and HIPAA regulations, as the same may be amended from time to time.
- D. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI, or confidential data that is essential to the ongoing operation of the Business Associate's organization and intended for internal use; or interference with system operations in an information system.

- E. As set forth in this Agreement, Contractor here and after, is the Business Associate of ADP that provides services, arranges, performs or assists in the performance of functions or activities on behalf of ADP and creates, receives, maintains, transmits, uses or discloses PHI.
- F. ADP and Business Associate desire to protect the privacy and provide for the security of PHI created, received, maintained, transmitted, used or disclosed pursuant to this Agreement, in compliance with HIPAA and HIPAA regulations and other applicable laws, including 42 CFR Part 2.
- G. The purpose of the Addendum is to satisfy certain standards and requirements of HIPAA and the HIPAA regulations.
- H. The terms used in this Addendum, but not otherwise defined, shall have the same meanings as those terms in the HIPAA regulations.

In exchanging information pursuant to this Agreement, the parties agree as follows:

### 3. PERMITTED USES AND DISCLOSURES OF PHI BY BUSINESS ASSOCIATE

- A. **Permitted Uses and Disclosures.** Except as otherwise indicated in this Addendum, Business Associate may use or disclose PHI only to perform functions, activities or services specified in this Agreement, for, or on behalf of ADP, or as required by law.
- B. **Specific Use and Disclosure Provisions.** Except as otherwise indicated in this Addendum, Business Associate may:
  - Use and disclose for management and administration.** Use and disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are required by law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.

### 4. RESPONSIBILITIES OF BUSINESS ASSOCIATE

Business Associate agrees:

- A. **Nondisclosure:** Not to use or disclose Protected Health Information (PHI) other than as permitted or required by this Agreement or as required by law. ADP advises Business Associate that 42 CFR Part 2 generally prohibits any re-disclosure without either the written consent of the person to whom the information pertains or a court order that complies with 42 CFR Part 2, Subpart E.
- B. **Safeguards:** To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI, including electronic PHI, that it creates, receives, maintains, uses or transmits on behalf of ADP; and to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities, and which incorporates the requirements of section C, Security, below. Business Associate will provide ADP with its current and updated policies.
- C. **Security:** To take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI, and provide data security procedures for the use of ADP at the end of the contract period. These steps shall include, at a minimum:

- 1) Complying with all of the data system security precautions listed in this Agreement or in an Exhibit attached to this Agreement;
- 2) Achieving and maintaining compliance with the HIPAA Security Rule (45 CFR Parts 160 and 164), as necessary in conducting operations on behalf of ADP under this Agreement;
- 3) Providing a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III- Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies; and
- 4) Complying with the safeguard provisions in the Department's Information Security Policy, embodied in Health Administrative Manual (HAM), sections 6-1000 et seq. and in the Security and Risk Management Policy in the Information Technology Section of the State Administrative Manual (SAM), sections 4840 et seq., in so far as the security standards in these manuals apply to Business Associate's operations. In case of a conflict between any of the security standards contained in any of these four enumerated sources of security standards, the most stringent shall apply. The most stringent means that safeguard which provides the highest level of protection to PHI from unauthorized disclosure. Further, Business Associate must comply with changes to these standards that occur after the effective date of this Agreement.

Business Associate shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this section and for communicating on security matters with ADP.

- D. **Mitigation of Harmful Effects.** To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or its subcontractors in violation of the requirements of this Addendum.
- E. **Business Associate's Agents:** To ensure that any agents, including subcontractors, to whom Business Associate provides PHI received from or created or received by Business Associate on behalf of ADP, agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI, including implementation of reasonable and appropriate administrative, physical, and technical safeguards to protect such PHI; and to incorporate, when applicable, the relevant provisions of this Addendum into each subcontract or subaward to such agents or subcontractors.
- F. **Availability of Information to ADP and Individuals:** To provide access as ADP may require, and in the time and manner designated by ADP (upon reasonable notice and during Business Associate's normal business hours) to PHI in a Designated Record Set, to ADP (or, as directed by ADP), to an Individual, in accordance with 45 CFR Section 164.524. Designated Record Set means the group of records maintained for ADP that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for ADP health plans; or those records used to make decisions about individuals on behalf of ADP. Business Associate shall use the forms and processes developed by ADP for this purpose and shall respond to requests for access to records transmitted by ADP within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.
- G. **Amendment of PHI:** To make any amendment(s) to PHI that ADP directs or agrees to pursuant to 45 CFR Section 164.526, in the time and manner designated by ADP.
- H. **Internal Practices:** To make Business Associate's internal practices, books and records relating to the use and disclosure of PHI received from ADP, or created or received by Business Associate on behalf of ADP, available to ADP or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by ADP or by the Secretary, for purposes of determining ADP's compliance with the HIPAA regulations.

- I. **Documentation of Disclosures:** To document and make available to ADP or (at the direction of ADP) to an Individual such disclosures of PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of PHI, in accordance with 45 CFR 164.528.
- J. **Notification of Breach:** During the term of this Agreement:
- 1) **Discovery of Breach.** To notify ADP **immediately by telephone call plus e-mail or fax** upon the discovery of breach of security or privacy of PHI in electronic or paper form if the PHI was, or is reasonably believed to have been, acquired by an unauthorized person; or **within 24 hours by e-mail or fax** of any suspected security incident, intrusion or unauthorized use or disclosure of PHI in violation of this Agreement and this Addendum, or potential loss of confidential data affecting this Agreement. Notification shall be provided to the ADP contract manager, the ADP Privacy Officer and the ADP Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notification shall be provided by calling the ADP ITSD Help Desk. Business Associate shall take:
    - a. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment and
    - b. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
  - 2) **Investigation of Breach.** To immediately investigate such security incident, breach, or unauthorized use or disclosure of PHI or confidential data. Within 72 hours of the discovery, to notify the ADP contract manager, the ADP Privacy Officer, and the ADP Information Security Officer of:
    - a. What data elements were involved and the extent of the data involved in the breach,
    - b. A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data,
    - c. A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized,
    - d. A description of the probable causes of the improper use or disclosure; and
    - e. Whether Civil Code sections 1798.29 or 1798.82 or any other federal or state laws requiring individual notifications of breaches are triggered.
  - 3) **Written Report:** To provide a written report of the investigation to the ADP contract manager, the ADP Privacy Officer, and the ADP Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall include, but not be limited to, the information specified above, as well as a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure.
  - 4) **Notification of Individuals:** To notify individuals of the breach or unauthorized use or disclosure when required under state or federal law and to pay any costs of such notifications, as well as any costs associated with the breach. The ADP contract manager, the ADP Privacy Officer, and the ADP Information Security Officer shall approve the time, manner and content of any such notifications.
  - 5) **ADP Contact Information.** To direct communications to the above referenced ADP staff, the Contractor shall initiate contact as indicated herein. ADP reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Agreement or Addendum.

<b>ADP Contract Manager</b>	<b>ADP Privacy Officer</b>	<b>ADP Information Security Officer</b>
See Provision 4 of Exhibit A for Contract Manager Information	Gayle Hirahara, Privacy Officer Department of Alcohol and Drug Services 1700 K Street Sacramento CA 95814 Telephone: (916) 323-1865 Email: ghirahara@adp.ca.gov	Gary Hummel, Security Officer Department of Alcohol and Drug Services 1700 K Street Sacramento CA 95814 Telephone: (916) 327-6724 Email: ghummel@adp.ca.gov

- K. **Employee Training and Discipline:** To train and use reasonable measures to ensure compliance with the requirements of this Addendum by employees who assist in the performance of functions or activities on behalf of ADP under this Agreement and use or disclose PHI; and discipline such employees who intentionally violate any provisions of this Addendum, including by termination of employment.
- L. To resist, in judicial proceedings if necessary, any effort to obtain access to the protected information except as expressly provided for in 42 CFR Part 2 and/or other applicable laws.

## 5. OBLIGATIONS OF ADP

ADP agrees to:

- A. **Notice of Privacy Practices.** Provide Business Associate with the Notice of Privacy Practices that ADP produces in accordance with 45 CFR 164.520, as well as any changes to such notice. Visit this Internet address to view the most current Notice of Privacy Practices:  
<http://www.ADP.ca.gov/hipaa>.
- B. **Permission by Individuals for Use and Disclosure of PHI.** Provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures.
- C. **Notification of Restrictions.** Notify the Business Associate of any restriction to the use or disclosure of PHI that ADP has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.
- D. **Requests Conflicting with HIPAA Rules.** Not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA regulations if done by ADP.

## 6. AUDITS, INSPECTION AND ENFORCEMENT

From time to time, ADP may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement and this Addendum. Business Associate shall promptly remedy any violation of any provision of this Addendum and shall certify the same to the ADP Privacy Officer in writing. The fact that ADP inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Addendum, nor does ADP's:

- A. Failure to detect, or

- B. Detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices constitute acceptance of such practice or a waiver of ADP's enforcement rights under this Agreement and this Addendum.

## 7. TERMINATION

- A. **Termination for Cause / Without Cause.** Upon ADP's knowledge of a material breach of this Addendum by Business Associate, ADP shall:
- 1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by ADP;
  - 2) Immediately terminate this Agreement if Business Associate has breached a material term of this Addendum and cure is not possible; or
  - 3) If neither cure nor termination is feasible, report the violation to the Secretary of the U.S. Department of Health and Human Services.
  - 4) ADP reserves the right to terminate this contract immediately without cause. Termination will be by 30 day written notice.
- B. **Judicial or Administrative Proceedings:** Business Associate will notify ADP if it is named as a defendant in a criminal proceeding for a violation of HIPAA. ADP may terminate this Agreement if Business Associate is found guilty of a criminal violation of HIPAA. ADP may terminate this Agreement if a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate is a party or has been joined.
- C. **Effect of Termination.** Upon termination or expiration of this Agreement for any reason, Business Associate shall return or destroy all PHI received from ADP (or created or received by Business Associate on behalf of ADP) that Business Associate still maintains in any form, and shall retain no copies of such PHI or, if return or destruction is not feasible, shall continue to extend the protections of this Addendum to such information, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

## 8. MISCELLANEOUS PROVISIONS

- A. **Disclaimer:** ADP makes no warranty or representation that compliance by Business Associate with this Addendum, HIPAA or the HIPAA regulations will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- B. **Amendment:** The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon ADP's request, Business Associate agrees to promptly enter into negotiations with ADP concerning an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA regulations or other applicable laws. ADP may terminate this Agreement upon thirty (30) days written notice in the event:
- 1) Business Associate does not promptly enter into negotiations to amend this Addendum when requested by ADP pursuant to this Section, or

- 2) Business Associate does not enter into an amendment providing assurances regarding the safeguarding of PHI that ADP in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.
- C. **Assistance in Litigation or Administrative Proceedings:** Business Associate shall make itself and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this Agreement, available to ADP at no cost to ADP to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against ADP, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inactions or actions by the Business Associate, except where Business Associate or its subcontractor, employee or agent is a named adverse party.
- D. **No Third-Party Beneficiaries:** Nothing express or implied in the terms and conditions of this Addendum is intended to confer, nor shall anything herein confer, upon any person other than ADP or Business Associate and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- E. **Interpretation:** The terms and conditions in this Addendum shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA regulations and applicable state laws. The parties agree that any ambiguity in the terms and conditions of this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.
- F. **Regulatory References:** A reference in the terms and conditions of this Addendum to a section in the HIPAA regulations means the section as in effect or as amended.
- G. **Survival:** The respective rights and obligations of Business Associate under Section 6.C of this Addendum shall survive the termination or expiration of this Agreement.
- H. **No Waiver of Obligations:** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.